

**Submitted by:**

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**IN THE UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

**PORTLAND DIVISION**

KIRK GAYTON, individually,  
Plaintiff(s),

vs.

TIME WARNER CABLE,  
Defendant(s).

**Case No.**

**COMPLAINT**

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**INTRODUCTION**

**1.**

Plaintiff, KIRK GAYTON (hereinafter “Gayton”) alleges that TIME WARNER CABLE violated the Telephone Consumer Protection Act (TCPA), 47 U.S.C. § 227 *et seq.* by making automated or prerecorded calls to his cellular phone without his consent.

## **JURISDICTION AND VENUE**

### **2.**

Jurisdiction is proper in the United States District Court District of Oregon because plaintiff is bringing claims pursuant to 47 U.S.C. § 227 *et seq.* Venue in the Portland Division is proper because the events giving rise to this action occurred in Multnomah County and the plaintiff is located in Multnomah County and Time Warner Cable made the calls to a cellular phone located in Multnomah County.

## **PARTIES**

### **3.**

Plaintiff Gayton is a resident of Multnomah County, Oregon.

### **4.**

Defendant Time Warner Cable is a Delaware Corporation with its principal place of business in New York, New York.

## **GENERAL ALLEGATIONS**

### **5.**

Mr. Gayton purchased a new cellular phone and obtained a new phone number associated with that phone on or about January 20, 2015.

### **6.**

On February 9, 2015, Mr. Gayton received an automated or prerecorded call from Time Warner Cable regarding a delinquent account unassociated with Mr. Gayton or anyone in his household or family.

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7.

On February 9, 2015, Mr. Gayton called Time Warner Cable at the number provided in the message and explained that he just obtained the cellular phone and new number and that he did not have an account with Time Warner Cable.

8.

Between February 9, 2015 and February 13, 2015, Time Warner Cable placed four additional automated calls to Mr. Gayton's cellular phone, the fourth of which Mr. Gayton answered and again explained to the Time Warner Cable representative that he did not have an account with Time Warner Cable.

9.

Between February 13, 2015, and March 9, 2015, Time Warner Cable placed at least 25 additional automated or prerecorded calls to Mr. Gayton's cellular phone.

10.

Mr. Gayton made numerous attempts to stop Time Warner Cable's automated calls including calling Time Warner Cable three times on February 20, 2015, once on February 23, 2015, and three times on February 26, 2015, before faxing Time Warner Cable a demand to cease and desist on or about March 2, 2015.

#### **FIRST CLAIM FOR RELIEF – TCPA**

##### **47 USC § 227 *et seq.***

11.

Time Warner Cable's conduct violated the TCPA on at least 30 occasions by calling Mr. Gayton's cell phone with an automated dial system and without MR. Gayton's consent.

**12.**

Time Warner Cable is liable to Mr. Gayton for \$500 for each unknowing violation of the TCPA and \$1500 for each knowing or willful violation of the TCPA.

**13.**

Mr. Gayton alleges that because he had his cellular telephone for approximately 19 days prior to receiving any calls, Time Warner Cable knew or should have known that they were calling the wrong number and is entitled to treble damages for each of the 30 automated calls for a total sum of \$45,000 in statutory damages.

**PRAYER FOR RELIEF**

**WHEREFORE**, plaintiffs pray for relief as follows:

1. \$45,000 in statutory damages;
2. Any other relief the courts deems just and equitable to the full extent permitted under controlling law; and
3. For any damages not timely paid, an award of post-judgment interest at the applicable statutory rate.

Dated: 07/9/2015

WILLIAM J. MACKE & ASSOCIATES

/s William J. Macke

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Of Attorneys for Plaintiffs